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SOLYNDRA, LLC

Attorneys (If Known)

DATE
09/02/11

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 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

**IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

PETER M. KOHLSTADT, on behalf of
 himself and all others similarly situated,

Plaintiff,

v.

SOLYNDRA, LLC

Defendant.

Civ. Case No. _____

C11-04403 JSC

**CLASS ACTION COMPLAINT for
 (1) VIOLATION OF WARN ACT 29 U.S.C. § 2101, et seq.
 and (2) VIOLATION OF CALIFORNIA LABOR CODE § 1400 et seq.**

Plaintiff, PETER M. KOHLSTADT ("Plaintiff"), alleges on behalf of himself and the
 class of those similarly situated as follows:

NATURE OF THE ACTION

1. On or about August 31, 2011, Defendant ordered mass layoffs and/or a plant
 closings as defined by 29 U.S.C. § 2101(a)(2), (3), for which it was required to provide 60 days
 advance written notice under the WARN Act to its employees. Defendant began terminating

1 approximately 1,100 other similarly situated employees at its facilities in the Fremont,
2 California area and elsewhere (the "other similarly situated former employees").

3 2. The Plaintiff brings this action on behalf of himself, and approximately 1,100 other
4 similarly-situated former employees who were terminated in mass layoffs or plant closings from
5 Defendant's facilities on or about August 31, 2011, and in the days thereafter. These employees
6 were not provided 60 days advance written notice of their terminations by Defendant, as required
7 by the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the
8 "WARN Act") and the California Labor Code § 1400 *et seq.* ("CAL WARN Act").

9 3. Plaintiff and all similarly situated employees seek to recover 60 days wages and
10 benefits, pursuant to 29 U.S.C. § 2104, from Defendant.

11 **JURISDICTION AND VENUE**

12 4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1334,
13 1367, and 29 U.S.C. § 2104(a)(5).

14 5. Venue in this Court is proper pursuant to 29 U.S.C. § 2104(a)(5).

15 **THE PARTIES**

16 **Plaintiff**

17 6. Plaintiff Peter Michael Kohlstadt was employed by Defendant as a Research &
18 Development Engineer and worked at its facility located at 901 Page Avenue, Fremont,
19 California until his termination on or about August 31, 2011.

1 **Defendant**

2 7. Upon information and belief at all relevant times, Defendant maintained and
3 operated its business at its Fremont, California facilities, including those at 47488 Kato Road,
4 Fremont, 1055 Page Avenue, Fremont, and maintained and operated other facilities including
5 1201 California Circle, Milpitas, California and elsewhere, as that term is defined by the WARN
6 Act (collectively the “Facilities”).

7 8. Upon information and belief and at all relevant times, Defendant Solyndra LLC
8 (“Solyndra”) is a limited liability company with its principal place of business located at 47488
9 Kato Road, Fremont, California, and conducted business in this district.

10 **WARN ACT CLASS ALLEGATIONS**

11 9. Plaintiff brings the First Claim for Relief for violation of 29 U.S.C. § 2101 *et seq.*
12 on his own behalf and on behalf of all other similarly situated former employees, pursuant to 29
13 U.S.C. § 2104(a)(5) and Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or
14 reported to one of Defendant’s Facilities and were terminated without cause on or about August
15 31, 2011, and within 30 days of that date, or were terminated without cause as the reasonably
16 foreseeable consequence of the mass layoffs and/or plant closings ordered by Defendant on or
17 about August 31, 2011, and who are affected employees, within the meaning of 29 U.S.C. §
18 2101(a)(5) (the “WARN Class”).

19 10. The persons in the WARN Class identified above (“WARN Class Members”) are
20 so numerous that joinder of all members is impracticable. Although the precise number of such
21 persons is unknown, the facts on which the calculation of that number can be based are presently
22 within the sole control of Defendant.

1 11. The identity of the members of the class and the recent residence address of each
2 of the WARN Class Members is contained in the books and records, including electronic
3 records, of Defendant.

4 12. On information and belief, the rate of pay and benefits that were being paid by
5 Defendant to each WARN Class Member at the time of his/her termination is contained in the
6 books and records, including electronic records, of the Defendant.

7 13. Common questions of law and fact exist as to members of the WARN Class,
8 including, but not limited to, the following:

- 9 (a) whether the members of the WARN Class were employees of the
10 Defendant who worked at or reported to Defendant's Facilities;
- 11 (b) whether Defendant unlawfully terminated the employment of the members
12 of the WARN Class without cause on their part and without giving them
13 60 days advance written notice in violation of the WARN Act; and
- 14 (c) whether Defendant unlawfully failed to pay the WARN Class members 60
15 days wages and benefits as required by the WARN Act.

16
17 14. The Plaintiff's claim is typical of those of the WARN Class. The Plaintiff, like
18 other WARN Class members, worked at or reported to one of Defendant's Facilities and
19 was terminated without cause on or about August 31, 2011, or within 30 days of that date, due to
20 the mass layoffs and/or plant closings ordered by Defendant.

21 15. The Plaintiff will fairly and adequately protect the interests of the WARN Class.
22 The Plaintiff has retained counsel competent and experienced in complex class actions, including
23 the WARN Act and employment litigation.

24 16. Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3)
25 because questions of law and fact common to the WARN Class predominate over any questions
26 affecting only individual members of the WARN Class, and because a class action is superior to

1 other available methods for the fair and efficient adjudication of this litigation – particularly in
2 the context of WARN Act litigation, where individual plaintiffs may lack the financial resources
3 to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages
4 suffered by individual WARN Class members are small compared to the expense and burden of
5 individual prosecution of this litigation.

6 17. Concentrating all the potential litigation concerning the WARN Act rights of the
7 members of the Class in this Court will obviate the need for unduly duplicative litigation that
8 might result in inconsistent judgments, will conserve the judicial resources and the resources of
9 the parties, and is the most efficient means of resolving the WARN Act rights of all the members
10 of the Class.

11 18. Plaintiff intends to send notice to all members of the WARN Class to the extent
12 required by Rule 23.

13 **CALIFORNIA WARN ACT CLASS ALLEGATIONS**

14 19. The Class Plaintiff brings the Second Claim for Relief for violation of Labor
15 Code § 1401 on behalf of himself and a class of similarly situated persons pursuant to Labor
16 Code § 1404 and Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or reported
17 to one of Defendant's Facilities and were terminated without cause on or about August 31, 2011
18 and thereafter (the "CAL WARN Class")

19 20. The persons in the CAL WARN Class identified above ("CAL WARN Class
20 Members") are so numerous that joinder of all members is impracticable. Although the precise
21 number of such persons is unknown, the facts on which the calculation of that number can be
22 based are presently within the sole control of Defendant.

1 21. On information and belief, the identity of the members of the class and the
2 recentresidence address of each of the CAL WARN Class Members is contained in the books
3 and records of Defendant.

4 22. On information and belief, the rate of pay and benefits that were being paid by
5 Defendant to each CAL WARN Class Member at the time of his/her termination is contained in
6 the books and records of the Defendant.

7 Common questions of law and fact exist as to members of the CAL WARN Class, including, but
8 not limited to, the following:

9 (a) whether the members of the CAL WARN Class were employees of the
10 Defendant;

11 (b) whether Defendant unlawfully terminated the employment of the members of
12 the CAL WARN Class without cause on their part and without giving them 60
13 days advance written notice in violation of the CAL WARN Act; and
14 (c) whether Defendant unlawfully failed to pay the CAL WARN Class members
15 60 days wages and benefits as required by the CAL WARN Act.

16 (c) whether Defendant unlawfully failed to pay the CAL WARN Class members
17 60 days wages and benefits as required by the CAL WARN Act.

18 23. The Class Plaintiff's claims are typical of those of the CAL WARN Class. The
19 Class Plaintiff, like other CAL WARN Class members, worked at or reported to one of
20 Defendant's Facilities and was terminated on or about August 31, 2011 and thereafter, due to the
21 closure of the Facilities ordered by Defendant.
22

23 24. The Class Plaintiff will fairly and adequately protect the interests of the CAL
24 WARN Class. The Class Plaintiff has retained counsel competent and experienced in complex
25 class actions on behalf of employees, including the CAL WARN Act, the federal WARN Act,
26 other similar state laws, and employment litigation.

1 25. Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3)
2 because questions of law and fact common to the CAL WARN Class predominate over any
3 questions affecting only individual members of the CAL WARN Class, and because a class
4 action superior to other available methods for the fair and efficient adjudication of this litigation
5 – particularly in the context of CAL WARN Class Act litigation, where individual plaintiffs may
6 lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate
7 defendant, and damages suffered by individual CAL WARN Class members are small compared
8 to the expense and burden of individual prosecution of this litigation.

9 26. Concentrating all the potential litigation concerning the CAL WARN Act rights
10 of the members of the Class in this Court will obviate the need for unduly duplicative litigation
11 that might result in inconsistent judgments, will conserve the judicial resources and the resources
12 of the parties and is the most efficient means of resolving the CAL WARN Act rights of all the
13 members of the Class.

14 27. The Class Plaintiff intends to send notice to all members of the CAL WARN
15 Class to the extent required by Rule 23.

16 **CLAIMS FOR RELIEF**

17 **Federal WARN Act Cause of Action**
18

19 28. Plaintiff realleges and incorporates by reference all allegations in all preceding
20 paragraphs.

21 29. At all relevant times, Defendant employed more than 100 employees who in the
22 aggregate worked at least 4,000 hours per week, exclusive of hours of overtime, within the
23 United States.

1 30. At all relevant times, Defendant was an “employer,” as that term is defined in 29
2 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a), and continued to operate as a business until it
3 decided to order a mass layoff or plant closing at the Facilities.

4 31. At all relevant times, Plaintiff and the other similarly situated former employees
5 were employees of Defendant as that term is defined by 29 U.S.C. §2101.

6 32. On or about August 31, 2011, the Defendant ordered a mass layoff or plant
7 closing at the Facilities, as that term is defined by 29 U.S.C. § 2101(a)(2).

8 33. The mass layoff or plant closing at the Facilities resulted in “employment losses,”
9 as that term is defined by 29 U.S.C. §2101(a)(2) for at least fifty of Defendant’s employees as
10 well as more than one-third of Defendant’s workforce at the Facilities, excluding “part-time
11 employees,” as that term is defined by 29 U.S.C. § 2101(a)(8).

12 34. The Plaintiff and the Class Members were terminated by Defendant without cause
13 on their part, as part of or as the reasonably foreseeable consequence of the mass layoff or plant
14 closing ordered by Defendant at the Facilities.

15 35. The Plaintiff and the Class Members are “affected employees” of Defendant,
16 within the meaning of 29 U.S.C. § 2101(a)(5).

17 36. Defendant was required by the WARN Act to give the Plaintiff and the Class
18 Members at least 60 days advance written notice of their terminations.

19 37. Defendant failed to give the Plaintiff and the Class members written notice that
20 complied with the requirements of the WARN Act.

21 38. The Plaintiff is, and each of the Class Members are, “aggrieved employees” of the
22 Defendant as that term is defined in 29 U.S.C. § 2104 (a)(7).

1 39. Defendant failed to pay the Plaintiff and each of the Class Members their
2 respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for
3 60 days following their respective terminations, and failed to make the pension and 401(k)
4 contributions and provide employee benefits under ERISA, other than health insurance, for 60
5 days from and after the dates of their respective terminations.

6 40. The relief sought in this proceeding is equitable in nature.

7 **VIOLATION OF CALIFORNIA LABOR CODE - § 1400et seq.**

8 41. Plaintiff realleges and incorporates by reference all allegations in all proceeding
9 paragraphs.

10 42. Plaintiff and similarly situated employees who worked at or reported to
11 Defendant's facilities in California ("the California Facilities"), and other "covered
12 establishments," are former "employees," of Defendant as defined in Labor Code § 1400(h).

13 43. Defendant terminated the employment of Plaintiff and other similarly situated
14 employees, pursuant to a "mass layoff," "relocation" or "termination" as defined in Labor Code
15 § 1400(d-f) on or about August 23, 2010 or thereafter.

16 44. At all relevant times, Defendant was an "employer" as defined in Labor Code
17 § 1400(b).

18 45. Defendant violated Labor Code § 1401 by ordering a "mass layoff," "relocation"
19 or "termination" in California without giving written notice at least 60 days before the order took
20 effect to (1) the employees affected by the order, and (2) the Employment Development
21 Department, the local workforce investment board, and the chief elected official of each city and
22 county government within which the mass layoff, relocation or termination occurred. The "mass
23 layoff," "relocation" or "termination" was not necessitated by a physical calamity or act of war.

47. As a result of Defendant's violation of Labor Code § 1401, Defendant is liable and subject to a civil penalty of not more than five hundred dollars (\$500) for each day of the violation, under Labor Code § 1403.

48. Plaintiff has incurred and the other similarly situated employees will incur attorneys' fees in prosecuting this claim and are entitled to an award of attorneys' fees under Labor Code § 1404.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, individually and on behalf of all other similarly situated persons, prays for the following relief as against Defendant:

- A. Certification of this action as a class action; and
- B. Designation of the Plaintiff as a Class Representative; and
- C. Appointment of the undersigned attorneys as Class Counsel; and
- D. A judgment in favor of the Plaintiff and the other similarly situated former employees equal to the sum of: their unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other COBRA benefits, for 60 days, that would have been covered and paid under the then-applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104 (a)(1)(A) and the California Labor Code § 1402(a), (b), including any civil penalties; and

1 E. Such other and further relief as this Court may deem just and proper.

2 Dated: September 2, 2011

3 Respectfully submitted,
4



5
6 By:

7 _____
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17